

10/730,841

03084

Remarks

The attorney for the Applicants would like to express his appreciation to Examiner Swiger for the courtesies extended during the telephone interview on April 10, 2007. At the suggestion of Examiner Swiger, the withdrawn claims, claims 8 – 14, have been canceled.

The Examiner has rejected claim 1 under 35 U.S.C. §103(a) as being unpatentable over McDaniel (US Patent 4,501,266) in view of Vinciguerra et al. (US Patent 5,554,158).

It should be noted that the present application is directed to a femoral impactor and extractor for positioning or removing a femoral knee prosthesis having first and second condylar portions. In order to position or remove such femoral knee prosthesis it is important that surgeon have an instrument which can firmly grip the prosthesis. In the case of the apparatus as set forth in claim 1, such gripping is accomplished with the condylar engagement member first and second condylar engagement surfaces engaging the first and second condylar portions respectively while the flange at the distal end of the post engages the superior surface. Such engagement is possible since the post carrying the flange is rotatable so that, following rotation, the first and second ends of the flange span the gap, in order to "... engage said superior surface while said condylar engagement member is engaged to said first and second condylar portions." This construction permits the femoral knee prosthesis to be firmly gripped by the

10/730,841

03084

apparatus of claim 1.

There is no teaching in either McDaniel or Vinciguerra et al. or in any of the other references of record, whether taken alone or combination with each other, which disclose or suggest a device which can firmly grip the prosthesis.

McDaniel is directed to a knee distraction device. As such it has a tibia engaging member 2 and condyle engaging members 3A. The McDaniel knee distraction device is provided with a pair of tubes 4 each of which houses a shaft which, upon threaded adjustment by rotating the knob 8 of the externally threaded adjusting member, will move the condyle engaging members 3A away from the tibia engaging part 2 to thereby stretch and apply tension to the ligaments. The knee distraction device of McDaniels is not shown as being used with a condylar prosthesis. However, even if it were to be used with a condylar prosthesis engaged to the distal end of the femur, it clearly would not grip such condylar prosthesis but only contact and push against the articulating surfaces of the respective condyle portions with the upper surfaces 3A of the condyle engaging members 3.

The Examiner takes the position that the knob 8 of McDaniel is somehow sized such that it could act as "... the outwardly extending flange ...that would fit in the gap formed by two condylar surfaces ...". It is inconceivable that the knob 8 of McDaniel, which is positioned below and totally outside of the bounds of the tibia T

10/730,841

03084

(as shown in Fig. 1 of McDaniel) and never is anywhere close to the condylar portions of the femur could form the basis for holding obvious a device as claimed herein in which the flange is rotated following proper positioning, to firmly engage the superior surface of the prosthesis while the condylar engagement member is engaged to the first and second condylar portions.

The reference to Vinciguerra et al. is similarly not relevant with respect to the apparatus set forth in claim 1. Vinciguerra et al. is directed to an intercondylar notch cutter which does not grip a condylar prosthesis or trial prosthesis 50 shown therein. Vinciguerra et al. has a pair of spaced apart condyle articulating surfaces which are configured to slidably contact the condyle surfaces on the trial prosthesis. A cutting bit 12 extends through a guide sleeve 14 between the respective articulating surfaces 36 and 38 for cutting a notch while the condyle articulating surfaces 36, 38 are in contact with the condyle surfaces of the trial prosthesis. There is no teaching or suggestion whatsoever in Vinciguerra et al. of engaging the superior surface of the trial prosthesis and no ability to do so with the notch cutter of Vinciguerra et al.

Assuming the Examiner agrees to the allowance of claim 1, it is believed that it is not necessary to review the other references; however, the remarks contained in the communication filed on December 7, 2006, are incorporated herein.

10/730,841

03084

In view of the foregoing, reconsideration of the application and allowance of claim 1 and claims 3 -- 7 dependent thereon are respectfully solicited. The allowance of claims 15 -- 19 is noted with appreciation.

In the event the Examiner does not agree that claims 1 and 3 -- 7 as presently drafted are allowable, it is requested that he initiate a telephone conference with the undersigned.

Respectfully submitted,

EMCH, SCHAFFER, SCHAUB
& PORCELLO CO., L.P.A.



Philip M. Rice

Reg. No.: 20,855

FMR/kab
P.O. Box 916
Toledo, Ohio 43697
Ph: (419) 243-1294
Fax (419) 243-8502